IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.8122 of 1999

Between:

K. Ratangapani Reddy,

S/o Sugunakar Reddy,

Aged about 31 years,

R/o Flat No.206, Ganapathi Complex,

N.V.Colony, Hyderabad.

..... PETITIONER

AND

1. The Board of Directors of the A.P.Cooperative

Oil Seeds Growers Federation Limited,

1st floor, Parisrama Bhavan,

Basheerbagh, Hyderabad.

2. The Andhra Pradesh Cooperative Oil Seeds

Growers Federation Limited, 1st Floor,

Parisrama Bhavan, Basheerbagh,

Hyderabad, rep.by its Managing Director.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court will be pleased to issue orders more in the nature of Writ of Mandamus declaring the action of the respondents, as illegal, arbitrary, unconstitutional and violative of principles of natural justice while quashing the Proceedings No.P&A/PF/398/91, dt.23.2.1998 together with the consequential orders in No.IC/P&A/WP 21551/97/1, dated 28-9-1998 directing the respondents to grant all attendant benefits to the petitioner.

Counsel for the Petitioner: Mr. C.B.RAM MOHAN REDDY

Counsel for the Respondent No.2: Mr. VILAS V.AFZULPURKAR

The Court made the following :

ORAL ORDER:

This writ petition is filed seeking a Mandamus declaring the Proceedings No.P&A/PF/398/91, dated 23.2.1998 of the 2nd respondent as confirmed by the 1st respondent in his Order No.LC/P&A/WP 21551/97/18, dated 28-9-1998 as arbitrary and illegal and consequently to direct the respondents to reinstate the petitioner into service with all consequential benefits.

The case of the petitioner is that he was appointed as a Chemist in the respondent-Federation vide Proceedings dated 12-4-1991 of the 2nd respondent. He was placed under suspension by the 2nd respondent on 31-12-1992 pending inquiry into certain charges of misappropriation of funds of the Federation, along with the Area Officer, Naidupet. The 2nd respondent-Federation is a commercial organization in terms of sub-Section (5) of Section 2 of the A.P. Shops and Establishments Act,1988 and the Rules framed thereunder. Under sub-Section (6) of Section 47 of the said Act, an employee should not be continued under suspension for more than one year and if he is so continued without the charge of misconduct being proved against him, such employee is entitled to full wages for the period of suspension beyond one year and the period of suspension shall be treated as on duty. Under Regulation 31.1 of the Conduct Regulations of the 2nd respondent-Federation, the Managing Director is competent to place him under suspension only for a period of six months, but in his case, he was placed under suspension for more than five years. Therefore, he filed W.P.No.2151 of 1997. In view of the interim orders passed in W.P.M.P.No.26266 of

1997 in the above writ petition, he was paid full salary for the months of December,1997 and January,1998 and thereafter, hurriedly conducted the inquiry and passed the impugned Order dated 23-2-1998. Aggrieved by the said dismissal order, he filed W.P.No.12230 of 1998 raising serious contentions. However, the said writ petition was disposed of directing him to approach the appellate authority – Board of Directors. He accordingly filed an appeal and the 1st respondent by an Order dated 28-9-1998 rejected the appeal. Challenging the same, the present writ petition is filed.

A detailed counter affidavit has been filed denying the allegations made by the petitioner and asserting *inter alia* that the petitioner was given all opportunity to defend himself i.e. opportunity to file explanation, supply of documents etc. The writ petition is devoid of merits and liable to be dismissed.

Learned counsel for the petitioner raised the following grounds:

i. that this is a case of no evidence and simply made some allegations against the petitioner and condemned him.

ii. that no reasons were furnished and no notice was issued by the disciplinary authority while differing with the report of the Enquiry Officer insofar as third charge is concerned, which was held to be not proved by the Enquiry Officer.

iii. that the Enquiry Officer found the petitioner not guilty of any misappropriation and opined that it may be a case of improper maintenance of accounts and the petitioner did not make any pecuniary advantage.

iv. That the disciplinary authority also sat as one of the Members of the Board (appellate authority) and the appeal was disposed of without application of mind apart from being biased with the presence of the disciplinary authority in the Board.

v. That the Area Officer under whom the petitioner was working was also found to be responsible for the improper maintenance of accounts, but so far as the Area Officer is concerned, he was reinstated into service, whereas a discriminatory treatment was meted out insofar as the petitioner is concerned; and

vi. that the punishment of dismissal from service is disproportionate to that of the misconduct alleged against the petitioner.

Learned counsel for the respondents supported the impugned orders and denied the contentions raised by the learned counsel for the petitioner. Learned counsel for the respondents also produced the entire enquiry report since the same is not available with the parties.

I have given my earnest consideration to the submissions made by both the learned counsel and gone through the impugned proceedings and other material made available on record including the original file relating to the enquiry against the petitioner.

Point No.(i)

According to the learned counsel for the petitioner, this is a case of no evidence. Some allegations were made and the petitioner was condemned for the same. There was no oral enquiry conducted and no opportunity was given to the petitioner to cross-examine the witnesses. The oral statements purported to have been recorded by the Enquiry Officer are the statements of the delinquent Officers including the petitioner, which are in the form of questions and answers and nothing else. Even the oral statement of the petitioner recorded by the Enquiry Officer does not indicate any misconduct against the petitioner. The detailed explanation submitted by the petitioner was also not properly considered. On a perusal of the records placed before this Court, it reveals that the enquiry was not conducted properly. No independent witness was examined and nobody spoke as to the entries in the stock register. The copies of the stock register were not furnished to the petitioner. In the absence of any oral or documentary evidence against the petitioner, I am in full agreement with the submissions made by the learned counsel for the petitioner that this is a case of no evidence. What all recorded by the Enquiry Officer was only the statement of the petitioner, which is not incriminating in its nature. A Constitution Bench of the Supreme Court in **SYED YAKOOB v. RADHAKRISHNAN** held as under:

> "……..the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law, which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however, grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued, if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit

admissible and material evidence, or had erroneously admitted inadmissible evidence, which has influenced the impugned finding. **Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law, which can be corrected by a writ of certiorari.** In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court……" (emphasis supplied)

Point No.(ii) :

It is true that the Enquiry Officer found the petitioner not guilty of any misappropriation and opined that it may be a case of improper maintenance of accounts and the petitioner did not make any pecuniary advantage. In the oral statement recorded from the petitioner in the shape of questions and answers, the purported amount of loss caused to the Federation was not put to him. No person was examined to prove the charge against the petitioner, except recording the statements of other delinquent officers. The delinquent officers including the petitioner were making allegations one against the other. But, they were not allowed to cross-examine them by each one of them nor it is anywhere recorded in the entire proceedings that though the petitioner was permitted to cross-examine he refused to do so. In the process, the question of eliciting the truth does not arise, since the petitioner denied the charges flatly and thrown the responsibility on the superior officers, who were supposed to be incharge of responsibility of stock maintenance. Therefore, the finding of the Enquiry Officer that the petitioner was not guilty of the misappropriation etc., and opining that it may be a case of improper maintenance of accounts cannot be found fault with. It is not the case of the management that the petitioner had made any pecuniary advantage in the process.

Point No. (iii)

It is also seen that the disciplinary authority had not issued any notice nor furnished any reasons for differing with the report of the Enquiry Officer insofar as third charge was concerned, which, according to the Enquiry Officer, was held to be

not proved. In the entire record, nowhere it is stated that any notice was given to the petitioner by the disciplinary authority while differing with the finding of the Enquiry Officer as to charge No.3 and the petitioner refused to file any explanation etc. Therefore, the disciplinary authority erred in coming to the conclusion that the petitioner colluded with the Millers in the maintenance of accounts and caused shortfall of the stocks. This finding is in utter disregard to the principles of natural justice. The petitioner was entitled to be put on notice by the disciplinary authority before it differed with the finding of the Enquiry Officer with regard to charge No.3. In the reported Judgment of the Apex Court in **PUNJAB NATIONAL BANK v. KUNJ BEHARI MISRA** held as under:

> "…….When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed.
>
> The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must be record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings……."

The said view was reaffirmed by the Apex Court in **STATE BANK OF INDIA v. K.P. NARAYANAN KUTTY.**

<u>Point No.(iv)</u>

Learned counsel for the petitioner strenuously contended that the disciplinary authority, who passed the impugned order also sat as one of the members of the Board (appellate authority) and the appeal was disposed of without application of mind, apart from being bias with the presence of the disciplinary authority in the Board. May be, the disciplinary authority also sat as one of the members, but that itself does not mean that the Board was influenced by the presence of the disciplinary authority. The disciplinary authority as one of the members of the Board sat as an appeal authority and this cannot be said to be an illegality or irregularity

committed by the appellate authority while dismissing the appeal of the petitioner.

Point No.(v)

It is further stated that the Area Officer under whom the petitioner was working was also responsible for maintenance of improper accounts; but, so far as Area Officer is concerned, he was let off and reinstated into service, but the petitioner was discriminated. As per the explanation submitted by the petitioner and also the oral statement recorded by the Enquiry Officer, the whole burden of song of the petitioner was that he was only an analyst and he is nothing to do with the maintenance of accounts and it is the duty of the Area Officer. In fact, the Managing Director at one stage informed the petitioner orally when he enquired, that maintenance of accounts is the headache of the miller and not the Department. In the explanation submitted, the petitioner has categorically asserted that he was only a Chemist and novice to comprehend the responsibilities and consequences. Taking advantage of his inexperience, the Area Officer got a stamp (Officer Incharge) prepared and asked him to prepare the daily reports and sign them as Officer Incharge. Except signing the daily reports as Officer Incharge, he did not attend any item of work connected with the custom milling. If at all he has to be blamed, it is only of writing and signing the daily reports, which he did at the behest of the Area Officer. As a Chemist, he was incharge of analysis work as per the distribution of work ordered by the Area Officer. He did not attend to any other item of work except the analysis of stocks and writing daily reports. Therefore, there was no scope for committing any fraud. It was the responsibility of the Area Officer to oversee every activity of the custom milling unit. As a Chemist, he was one of the limbs of such a team. The Area Officer is the Head of the unit and he is responsible for everything. The petitioner is innocent and althrough he sought CBCID enquiry. Except recording the oral statement of the Area Officer in the shape of questions and answers, the petitioner was not asked to cross-examine the Area Officer when he made a statement as one of the delinquent Officers in this case. This all would show that no proper enquiry was conducted to elicit the truth by examining independent witnesses and thoroughly examining the records or examining the Millers, who said to have lifted stocks in a deceitful manner. Neither the Enquiry Officer nor the disciplinary authority discussed the statements of the delinquent Officers in their reports except stating that oral statements were recorded from the delinquent Officers. It is not the case of the Management that the Area Officer was not incharge of maintenance of stock

accounts nor any evidence is adduced to show that the petitioner herein was the Officer, who is responsible for maintaining the accounts of the stocks in the mill. Therefore, it was the responsibility of the Area Officer to look into the affairs of the mill. The management has not taken any action against the Area Officer. He was merely let off. This itself shows, how the disciplinary authority was bent upon in its approach to punish the petitioner. This is nothing but a discriminatory treatment meted out to the petitioner.

Point No.(vi)

Lastly, the learned counsel for the petitioner vehemently contended that the punishment of dismissal from service is disproportionate to that of the misconduct alleged against the petitioner. In fact, no loss was caused to the Federation and even the millers, who were responsible for the stocks in the mill had deposited the entire amount thereafter and the criminal prosecution launched against the petitioner ended in honourable acquittal.

What all found against the petitioner was some irregularities in sending the reports. In fact, for that, the petitioner was not the incharge. It was the duty of the Area Officer, who was supposed to look into this. Therefore, the punishment of dismissal from service, assuming that the charges are proved, is definitely disproportionate to that of the misconduct proved against the petitioner.

I am of the considered view that this is a case of no evidence and the enquiry was not conducted in the way in which it was supposed to be. There was absolutely no documentary or oral evidence available against the petitioner except the self-serving statements of the other delinquent Officers in the very same case, which are in the shape of questions and answers. After looking into the statements of the other delinquent Officers in the very same case, I am fully convinced that the petitioner's inexperience was taken advantage by the Area Officer, who asked the petitioner to sign as Officer Incharge. The Officer Incharge was the Area Officer himself. Instead of signing himself, he had entrusted these duties to the petitioner, which could not have been done.

In view of the aforementioned discussion, the impugned order of the disciplinary authority as confirmed by the appellate authority is liable to be set aside and accordingly, set aside. However, I am of the considered view that remitting the matter to the disciplinary authority for a fresh enquiry, at this stage, may not be

necessary. Since for more than a decade the petitioner was out of employment, I feel it appropriate to give a quietus to the matter at this stage itself.

In the result, the writ petition is allowed and the respondents are directed to reinstate the petitioner into service, but without any back wages for the period he was out of service. However, the petitioner is entitled for other attendant benefits like notional increments, continuity of service for the purpose of seniority etc. There shall be no order as to costs.

07-4-2005

prk

That Rule nisi has been made absolute as above. Witness the Honourable Sri Bilal Nazki, the Acting Chief Justice, on this Thursday, the seventh day of April, two thousand and five.

ASSISTANT REGISTRAR

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SECTION OFFICER

To

1. The Board of Directors of the A.P. Cooperative

Oil Seeds Growers Federation Limited,

1st floor, Parisrama Bhavan,

Basheerbagh, Hyderabad.

2. The Managing Director, Andhra Pradesh Cooperative Oil Seeds

Growers Federation Limited, 1st Floor,

Parisrama Bhavan, Basheerbagh,

Hyderabad.

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